

### Paid Sick Leave Now the Law in New Jersey

New Jersey has now joined several other states in passing a paid sick leave law. The law preempts paid sick leave ordinances adopted by several cities and towns so there is now one uniform law in this area for New Jersey employers. Here is what you need to know about the new law:

#### How Much Paid Sick Leave Must Employers Provide?

Employees shall accrue one hour of earned sick leave for every 30 hours worked which can be capped at 40 hours per year. The accrual is for a "benefit year" which can be any period of time so long as it represents 12 consecutive months. Once the employer establishes the benefit year, it cannot change it without first notifying the Commissioner of the New Jersey Department of Labor. If keeping track of how much paid sick leave time an employee is accruing is too much of a headache, then employers can consider simply providing the full 40 hours of paid sick leave time at the beginning of the benefit year. Employers should also note that if they already have paid time off or "PTO" policies, they may already satisfy the requirements of the new law.

#### May Employees Carry-Over Unused Sick Leave into the Next Benefit Year?

The law does allow employees to carry over accrued but unused paid sick leave into the following year, unless the employer offers to pay the employee for the unused earned sick leave in the final month of the benefit year and the employee accepts such offer. Moreover, notwithstanding the carry-over of unused sick leave, employers are not required to permit an employee to use or accrue in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of earned sick leave.

#### Is There Any Waiting Period?

While employees are allowed to accrue sick leave immediately upon starting employment, employers can prohibit the actual use of any sick leave until the passage of 120 calendar days from the start of their employment.

#### Does it Apply to Small Businesses?

Yes it does. The law applies to all employers in New Jersey regardless of size. The only exceptions are for per diem health care workers, construction workers employed pursuant to a collective bargaining agreement, and certain public employees who already have paid sick leave benefits.

#### Does it Apply to Part-Time Employees?

Yes. There is nothing differentiating between full-time and part-time employees. The amount of paid sick time available is simply based on the amount of hours worked.

#### How is "Sick Leave" Defined?

Very broadly. (This is New Jersey, remember). Sick leave may be used for the following circumstances:

- Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee.
- Caring for a family member who needs time for diagnosis, care, or treatment of, or recovery from, a mental or physical illness, injury or other adverse health condition, or for preventive medical care.
- Time needed as a result of an employee or a family member being a victim of domestic or sexual violence.
- Time needed because there is a closure of the workplace, or of a school or childcare facility by order of a public official because of a public health concern.
- Time needed to attend a school-related conference, meeting, function, or other event requested or required by a school responsible for the education of the employee's child.
- Time needed to attend a meeting regarding care provided to the child of an employee in connection with the child's health conditions or disability.

#### Who Qualifies as a "Family Member" Under the New Law?

Family member is also broadly defined. It includes a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, and grandparent. However, it also includes anyone "whose close association with the employee is the equivalent of a family relationship." It is not clear at this point what this exactly means but hopefully the Department of Labor provides some guidance soon. However, based on the nature of the relationship with the person for whom an employee may be providing care, employers should always be very cautious before denying time off in such a situation.

#### Can an Employer Require Notice or Documentation From Employees?

Yes, employers may require that employees provide advance notice of not more than seven calendar days before using sick leave if the leave is foreseeable. If unforeseeable, then

employees need only provide as much notice as practicable. If the sick leave exceeds three or more consecutive days, employers may then require that employees provide reasonable documentation to show that the leave is actually eligible leave under this new law.

### **Must the Employer Maintain Records and Provide Any Notice?**

Employers must maintain documents showing the hours worked and the amount of sick leave used by employees, and they must do so for a period of five years. Employers must also post notices in the workplace regarding the new law, and must provide individual notices to each employee. This must be done within thirty days after the Department of Labor issues the notification. It must then be done at the time of each employee's hire.

### **When is the New Law Effective?**

The new law will go into effect October 29, 2018.

### **What Should I Be Doing Now?**

Many employers already provide some paid sick time, although as noted above, sick leave time under the new law is broadly defined. Businesses who already offer sick leave (or other paid leave) should determine how the new leave law will dovetail with their existing policies and make any changes and adaptations necessary to make sure they do. Businesses who do not offer paid time off in any form will need to implement a compliant policy. October 29, 2018 will be here before you know it so the best practice is to get ahead of this now.

For more information, or if you have any questions regarding this advisory, you may contact any member of Archer's experienced [Labor and Employment Law](#) attorneys in Haddonfield, N.J. at 856-795-2121; Princeton, N.J. at 609-580-3700; Hackensack, N.J. at 201-342-6000; Philadelphia, Pa. at 215-963-3300, or Wilmington, Del. at 302-777-4350.

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